

Berman J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

D'ARRIGOBROS. CO. OF NEW YORK, INC., BEST
TROPICAL PRODUCE, INC., C&J PRODUCE CO,
INC., C.M. PRODUCE LLC, COOSEMAN NEW
YORK, INC., FIERMAN PRODUCE EXCHANGE,
INC., FRUITCO CORP., HUNTS POINT TROPICAL,
INC., KATZMAN BERRY CORP., S. KATZMAN
PRODUCE INC., KRISP PAK SALES CORP., LBD
PRODUCE, LEE LOI INDUSTRIES, INC., RUBIN
BROS. PRODUCE CORP, and A.J. TRUCCO, INC.,

Plaintiffs,

-against-

KOREAN PRODUCE BUYING SERVICE, INC. d/b/a
KPT,

Defendant.

Case No.:

10CV6512 (RMB)

**ORDER TO SHOW CAUSE
WITH TEMPORARY
RESTRAINING ORDER**

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DOC #:
DATE FILED: 9/3/10

UPON the annexed affidavit of Matthew D'Arrigo, dated August 31, 2010, with exhibits, the application and certification of Leonard Kreinces, Esq., both dated August 31, 2010, as to why notice should not be required pursuant to Fed. R. Civ. P. 65(b), Complaint, and the accompanying Memorandum of Law, it is

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ORDERED, that the defendant, KOREAN PRODUCE BUYING SERVICE, INC. d/b/a KPT show cause before the Honorable Richard Berman United States District Judge, at the United States Courthouse, 500 Pearl Street, New York, New York, on ~~August~~ **September 15**, 2010 at ~~10:30~~ **10:30** o'clock **(a.m.)** p.m., or as soon thereafter as counsel can be heard, why a preliminary injunction pursuant to Rule 65(a) of the Federal Rules of Civil Procedure should not issue enforcing the statutory trust under Section 5(c) of the Perishable Agricultural Commodities Act, 7 U.S.C. §499e(c)(4), by enjoining the defendants, their agents, employees, successors, banking institutions,

attorneys, and all other persons in active concert and participation with them from using PACA trust assets in their ordinary course of business, or otherwise dissipating trust assets, or making payment of any trust asset to any creditor, person or entity until further order of this Court or until the defendant pays \$1,231,289.34, plus interest, costs, and attorneys fees to the plaintiffs; and

IT APPEARING to the Court from the certification of Matthew D' Arrigo, that the defendant is about to commit the acts hereinafter specified and that it will do so unless restrained by order of this Court, and that immediate and irreparable injury, loss or damage will result to plaintiffs before notice can be given and the defendant or its attorneys can be heard in opposition to the granting of a temporary restraining order, in that plaintiffs and other PACA trust creditors will suffer immediate and irreparable injury in the form of a loss of trust assets; it is therefore

ORDERED, that defendant, KOREAN PRODUCE BUYING SERVICE, INC. d/b/a KPT, and Mrs. Yong Kim, widow of Yong Kim, the deceased sole officer, director and shareholder of the corporate defendant, their agents, officers, assigns, banking institutions and attorneys and all persons in active concert and participation with them be and they hereby are:

(i) temporarily restrained from violating the provisions of the Perishable Agricultural Commodities Act 7 U.S.C. §499a et seq. (hereinafter "PACA") and the regulations promulgated thereunder; and

(ii) temporarily restrained from, in any way, directly or indirectly, in whole or in part, absolutely or as security, paying, withdrawing, transferring, assigning or selling any and all existing PACA trust assets, including but not limited to the premises located at 132 New York City Terminal Market, Hunts Point, Bronx, New York 10474 and/or otherwise disposing of company or personal assets to any creditors, persons or entitles until further order of this Court or until the

defendant pays the plaintiffs the sum of \$1,231,289.34 plus interest, costs, and attorneys fees, and

(iii) ordered that if the defendant fails to pay plaintiff in full within three (3) business days from the date of service of this order on the defendant, the defendant must account to this Court and counsel for the plaintiffs for the following items generated in defendant's business, to wit: any and all perishable agricultural commodities, inventories of food or other products derived from such perishable agricultural commodities, and any and all receivables or proceeds from such commodities and food or other products, which in any way have been distributed or disposed of, directly or indirectly, in whole or in part, absolutely or as security since the establishment of the PACA trust with a description of the property involved, the recipient, the date and the purpose of the distribution; and

(iv) ordered that if the defendant fails to pay plaintiffs in full within three (3) business days from the date of service of this order on the defendant, the defendant must account to this Court and counsel for the plaintiffs for all assets in defendant's ownership, possession, custody and/or control, or in the possession, custody and/or control of entities controlled by defendant, including the date of acquisition and whether or not such assets or any interest therein derived from the proceeds of the sale of perishable agricultural commodities by KOREAN PRODUCE BUYING SERVICE, INC. d/b/a KPT, and, if not, the source of such assets; and

(v) ordered to restore to the PACA trust any PACA trust assets derived directly or indirectly from KOREAN PRODUCE BUYING SERVICE, INC. d/b/a KPT, operations and received or transferred by them which are lawfully obtainable by KOREAN PRODUCE BUYING SERVICE, INC. d/b/a KPT; and

(vi) ordered to segregate and escrow all proceeds from the sale of perishable

agricultural commodities in a trust account to be designated "KOREAN PRODUCE BUYING SERVICE, INC. d/b/a KPT, Limited PACA Escrow Account" with plaintiffs counsel, Kreinces & Rosenberg, P.C., as escrow agent, depositing therein all cash assets of the PACA trust, no withdrawals to be made therefrom pending further order of this Court; and

(vii) ordered that if the defendant fails to pay plaintiffs in full within three (3) business days from the date of service of this order on the defendants, the defendants must deliver to plaintiffs counsel a complete list of all accounts receivable of KOREAN PRODUCE BUYING SERVICE, INC. d/b/a KPT, generated by their perishable agricultural commodities business with those receivables being collected by defendant or plaintiffs' counsel and deposited in the "KOREAN PRODUCE BUYING SERVICE, INC. d/b/a KPT, PACA Escrow Account," and it is further

(viii) directing Mrs. Young Kim, her agents, and any persons, firms, corporation or any other entity who has possession of the records of account of the corporate defendant, including but not limited to its accounts receivables, bank statements, cancelled checks and deposit receipts, to immediately turn those records over to Kreinces & Rosenberg, P.C., as attorneys for the plaintiffs in the above-captioned action, within five (5) days after service upon them of a copy of this order and the papers upon which it is based, and it is further

ORDERED, that this Order will be binding upon the parties to this action, their officers, agents, servants, employees, banks, or attorneys and all other persons or entities who receive actual notice of this Order, and it is further

ORDERED, that this order will expire ten (10) days after entry unless within such time the order for good cause shown is extended for a like period, or unless the defendant consents that it may be extended for a longer period; and it is further

ORDERED, that the plaintiffs shall not be required to post a bond hereunder, and it is further

ORDERED, that this order to show cause together with copies of the papers upon which it was granted be served upon the defendant, KOREAN PRODUCE BUYING SERVICE, INC. d/b/a ~~KPT~~ **and** its attorney, Chan-Yun Joo, Esq., 303 Fifth Avenue, Suite 806, New York, New York 10016, and Mrs. Yong Kim, at 144-31 41st Avenue, Apt. 3B, Flushing, New York 11355 by ~~overnight~~ **personal** delivery, on or before September 8, 2010, before 5:00 p.m.; and it is further

ORDERED, that opposing papers shall be served so as to be received by plaintiffs counsel, and courtesy copies received by the Court, by noon on September 13, 2010.

This Temporary Restraining Order is entered this 3 day of September , 2010 at 4:30 a.m./p.m. A hearing on plaintiff's motion for a preliminary injunction is scheduled for September 15, 2010 at 10:30 a.m. n.m.

Dated: September 3, 2010

Richard M. Barman
U.S.D.J.